



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2022-0799]

RIN 1625-AA00

### Safety Zone; Atlantic Ocean, Cape Canaveral Offshore Launch Area, Cape Canaveral, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary interim rule and request for comments.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for waters of the Atlantic Ocean, adjacent to Cape Canaveral, FL. This safety zone would implement a special activities provision of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021. The Coast Guard is establishing this zone for the launch of the Artemis I rocket, which is being launched by the National Aeronautics and Space Administration (NASA). The temporary safety zone will be located within the Coast Guard District Seven area of responsibility offshore of Cape Canaveral, Florida. This temporary interim rule prohibits U.S.-flagged vessels from entering the temporary safety zone unless authorized by the District Commander, or the Captain of the Port of the Seventh Coast Guard District or a designated representative. Foreign-flagged vessels are encouraged to remain outside the safety zone. This action is necessary to protect vessels and waterway users from the potential hazards created by launch of the Artemis I rocket, flying over the U.S. Exclusive Economic Zone (EEZ).

**DATES:** This temporary interim rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through December 31,

2022. For the purposes of enforcement, actual notice will be used from September 27, 2022 until **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments identified by docket number USCG-2022-0799 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LT Ryan Gilbert, District Seven, Waterways Management Division, U.S. Coast Guard; telephone 305-415-6750, email [Ryan.A.Gilbert@uscg.mil](mailto:Ryan.A.Gilbert@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

BNM	Broadcast Notice to Mariners
CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
EEZ	Exclusive Economic Zone
FAA	Federal Aviation Administration
FL	Florida
<b>FR</b>	<b>Federal Register</b>
MSIB	Marine Safety Information Bulletin
NASA	National Aeronautics and Space Administration
NM	Nautical Mile
NOE	Notice of Enforcement
NPRM	Notice of Proposed Rulemaking
RNA	Regulated Navigation Area
§	Section
U.S.	United States
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

On January 1, 2021, the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283) (Authorization Act) was enacted. Section 8343 (134 Stat. 4710) calls for the Coast Guard to conduct a 2-year pilot program to establish and implement a process to establish safety zones to address

special activities,<sup>1</sup> including space activities carried out by United States (U.S.) citizens in the U.S. Exclusive Economic Zone (EEZ).<sup>2</sup> Terms used to describe space activities, including *launch*, are defined in 51 U.S.C. 50902.

The Coast Guard has long monitored space activities impacting the maritime domain and taken actions to ensure the safety of vessels and the public as needed during space launch operations. In conducting this activity, the Coast Guard engages with other government agencies, including the Federal Aviation Administration (FAA) and National Aeronautics and Space Administration (NASA). This engagement is necessary to ensure statutory and regulatory obligations are met to ensure the safety of launch operations and waterway users.

The Coast Guard has an existing permanent regulated navigation area (RNA) that prevents vessels from operating in the waters adjacent to the Cape Canaveral launch area; however, that area only extends to the limits of the territorial seas.<sup>3</sup> With this temporary interim rule, the Coast Guard is establishing a temporary safety zone in the Atlantic Ocean in the U.S. EEZ that will abut the existing RNA near Cape Canaveral, FL. The Coast Guard intends to activate the existing RNA in § 165.775 concurrently with the temporary safety zone established by this temporary interim rule for the launch of the Artemis I rocket.

The Artemis I is the first launch of the Artemis Program, and the only Artemis rocket launch anticipated until May of 2024. It is being launched to conduct a test flight for future missions to the moon, and the mission will include orbiting the moon. The Artemis rocket is much larger than most rockets that have been launched from the Eastern Range in Cape Canaveral, FL in recent years. While it is of a similar size to the

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<sup>1</sup> *Special Activities* means space activities, including launch and reentry, as such terms are defined in section 50902 of Title 51, United States Code, carried out by United States citizens.

<sup>2</sup> The Coast Guard defines the U.S. *exclusive economic zone* in 33 CFR 2.30(a). *Territorial sea* is defined in 33 CFR 2.22.

<sup>3</sup> See 33 CFR 165.775.

Space Shuttle and Apollo rockets, an untested rocket of this size has not been launched from Cape Canaveral in decades. As the rocket is much larger, and has never been launched before, there is a higher risk profile than with a typical launch. Additionally, based on the historic nature of this launch it is expected that there will be additional recreational boating traffic; therefore, it has been determined that the best way to reduce risk is to establish this offshore safety zone abutting the established RNA.

The Coast Guard is issuing this temporary interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this temporary interim rule because doing so would be impracticable. This safety zone must be established by September 27, 2022, in order to protect vessels and waterway users from the potential hazards associated with the next scheduled launch of the Artemis I rocket.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary interim rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this temporary interim rule would be contrary to the rule’s objectives of ensuring the protection of vessels and waterway users in the U.S. EEZ from the potential hazards created by the next scheduled launch operation.

We are soliciting comments on this rulemaking. If we determine that changes to this rulemaking action are necessary, the Coast Guard will consider comments received in a subsequent temporary interim rule or temporary final rule.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this temporary interim rule under section 8343 of the Authorization Act. The Seventh District Commander has determined that there are potential hazards in the U.S. EEZ created by the launch of the Artemis I rocket. The purpose of this temporary interim rule is to ensure safety of vessels and waterway users before, during, and after the scheduled launch.

#### **IV. Discussion of the Rule**

This temporary interim rule establishes a temporary safety zone with an effective date starting with the next scheduled launch on September 27, 2022 through December 31, 2022. However, the temporary safety zone would only be subject to enforcement for 5 to 6 hours for the Artemis I rocket launch from Cape Canaveral, FL. The Coast Guard will inform the public of the activation of the temporary safety zone through a Notice of Enforcement (NOE) that will be issued once the Coast Guard receives notification of the launch date from NASA. The Coast Guard intends to enforce the temporary safety zone for the Artemis I rocket launch with assets on scene to ensure the temporary safety zone is cleared of persons and vessels.

The temporary safety zone will cover certain navigable waters in the path of the rocket being launched. The safety zone will cover approximately 720 square miles, and is rectangular in shape. It will directly abut the RNA established in § 165.775. U.S.-flagged vessels will be prohibited from entering the temporary safety zone unless authorized by the District Commander or the Captain of the Port (COTP) of the Seventh Coast Guard District or a designated representative. Foreign-flagged vessels are encouraged to remain outside the safety zone. The coordinates of the safety zone are provided in the regulatory text.

No U.S. flagged vessel will be permitted to enter the safety zone without obtaining permission from the District Commander, the COTP, or a designated representative.

Once the Artemis I rocket has been launched, the safety zone will no longer be needed. At that time, the Coast Guard will notify the public of the cancellation of the safety zone through a Broadcast Notice to Mariners (BNM), and through social media.

## **V. Regulatory Analyses**

We developed this temporary interim rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This temporary interim rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this temporary interim rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and scope of the temporary safety zone. The temporary safety zone is limited in size and location to only to the areas where Artemis I rocket launch may pose a danger to vessels outside the RNA. The temporary safety zone is limited in scope, as vessel traffic will be able to safely transit around the zone. The safety zone is expected to be enforced for approximately 5 to 6 hours for each launch window. After the launch has been completed, and there is no longer any danger to vessels from the Artemis I rocket, the Coast Guard will cancel the safety zone and notify waterway users and vessels of its cancellation. The safety zone will ensure the protection of vessels and waterway users from the potential hazards created by the launch of the Artemis I rocket.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this temporary interim rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A. above, this temporary interim rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this temporary interim rule. If the temporary interim rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this temporary interim rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This temporary interim rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Governments*

A temporary interim rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this temporary interim rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this temporary interim rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. §§ 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this temporary interim rule will not result in such an expenditure, we do discuss the effects of this temporary interim rule elsewhere in this preamble.

*F. Environment*

We have analyzed this temporary interim rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and



Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This temporary interim rule involves enforcement of a safety zone for approximately 5 to 6 hours during the duration of the rocket launch of the Artemis I rocket. The zone will be activated as many times as it is needed until the rocket is launched, or 11:59 p.m. on December 31, 2022, whichever comes first. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

*Submitting comments.* We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to

<https://www.regulations.gov>, type USCG-2022-0799 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

*Personal information.* We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 is revised to read as follows:

Authority: 46 U.S.C. 70034, 70051; section 8343 of Pub. L. 116-283, 134 Stat. 3388, 4710; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.T07-0799 to read as follows:

**§ 165.T07-0799 Safety Zone; Atlantic Ocean, Cape Canaveral Offshore Launch Area, Cape Canaveral, FL.**

(a) *Location.* The following area is a safety zone: All waters of the Atlantic Ocean, from surface to bottom, encompassed by a line connecting the following points beginning at Point 1: 28° 47' 51"N, 080° 27' 43.4"W, thence to Point 2: 28° 59' 24.5"N, 080° 03' 37.4"W, thence to Point 3: 28° 29' 1.2"N, 079° 53' 33.7"W, thence to Point 4: 28° 30' 38.3"N, 080° 18' 13.9"W, following along the 12 nautical mile line back to Point 1. These coordinates are based on WGS 84.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, U.S. Space Force range safety personnel, and Federal, State, and local officers designated by or assisting the District Commander or the Captain of the Port (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, U.S.-flagged vessels may not enter the safety zone described in paragraph (a) of this section unless authorized by the District Commander, the COTP, or a designated representative. All foreign-flagged vessels are encouraged to remain outside the safety zone.

(2) To seek permission to enter, transit through, anchor in or remain within the safety zone contact Sector Jacksonville by telephone at (904) 714-7557 or the District Commander's or the COTP's representative via VHF-FM radio on channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the

District Commander, the COTP, or a designated representative.

(d) *Notification of enforcement.* (1) The District Commander, or the COTP, or a designated representative will inform the public of the activation of the safety zone described in paragraph (a) of this section by Notice of Enforcement that will be issued once the Coast Guard receives notification of the launch date from NASA.

(2) The Coast Guard intends to enforce the temporary safety zone for the Artemis I rocket launch with assets on scene to ensure the temporary safety zone is cleared of persons and vessels.

(3) Once the Artemis I rocket has been launched, the safety zone will no longer be needed. At that time, the Coast Guard will notify the public of the cancellation of the safety zone through a Broadcast Notice to Mariners on VHF-FM channel 16, and through social media.

(e) *Effective period.* This section is effective from 12:01 a.m. on September 27, 2022, through 11:59 p.m. on December 31, 2022.

Dated: September 22, 2022.

Brendan C. McPherson,  
Rear Admiral U.S. Coast Guard,  
Commander, Seventh Coast Guard District.

[FR Doc. 2022-21206 Filed: 9/29/2022 8:45 am; Publication Date: 9/30/2022]